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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,928	11/18/2003	James J. Crow	804138-US-NP	4254
47394	7590	03/19/2009		
HITT GAINES, PC ALCATEL-LUCENT PO BOX 832570 RICHARDSON, TX 75083			EXAMINER KEEFER, MICHAEL E	
			ART UNIT 2454	PAPER NUMBER
			NOTIFICATION DATE 03/19/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@hittgaines.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/715,928	<b>Applicant(s)</b> CROW ET AL.	
	<b>Examiner</b> MICHAEL E. KEEFER	<b>Art Unit</b> 2454	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8, 11-13, 19-21 and 27-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11-13, 19-21, and 27-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. This Office Action is responsive to the amendment filed 12/17/2008.

#### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 4, 8, 11-12, 19-20, and 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sadowsky (US 5790796) in view of Waldin et al. (US 6651249), hereafter Waldin.

Regarding **claims 1, 11, 19, and 27-32**, Sadowsky discloses:

A method comprising:

in response to a first request on behalf of a requesting instance of a plurality of instances of an application, providing a criterion for identifying a set of instances of the plurality of instances to receive first data and a location of the first data; and (Abstract lines 6-8 disclose sending a master object to a client including fields that indicate what files are available to the client)

providing the first data to the requesting instance when a second request is made on behalf of the requesting instance for the first data upon determining that the requesting instance satisfies the criterion. (Abstract lines 12-17 disclose the client requesting specific files from the master object)

an index file comprises the criterion and the location; and (the master object is an index file)

the providing the criterion and the location comprises providing the index file. (the master object is provided to the client)

Sadowsky discloses all the limitations of claims 1, 11, 19, and 27-32 except for a hierarchal file structure configured to identify a set of instances, the file structure including at least one instance name criterion, at least one configuration criterion nested within the instance name criterion, and a plurality of filter criteria nested within each configuration criterion, wherein: the name criterion identifies a specific agent or application and includes at least one of the configuration criteria; each configuration criterion identifies a class of instances and includes a location of first data and at least one filter criterion; each filter criterion includes a plurality of instance properties; and at least one filter criterion identifies the requesting instance; in response to a filter engine associated with the requesting instance determining that the requesting instance is included in the set of instances.

The general concept of providing an XML hierarchy to containing parameters to download a file is well known in the art as taught by Waldin. (See Figure 6, Col. 7 lines 38-62, as well as Appendix B)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Sadowsky with the general concept of providing an XML hierarchy to containing parameters to download a file as taught by Waldin in order to allow for more efficient updating of programs.

Regarding **claims 4, 12, 20, and as applied to claims 1, 11, 19, and 23,**

Sadowsky discloses:

receiving a message indicating whether the first data was received. (It is inherent in the TCP/IP networking protocol that an ACK packet is sent if data is received properly.)

Regarding **claim 8 and as applied to claim 1,** Sadowsky discloses:

the first data comprise one of:

a first executable program for each of the set of instances of the application,

a second executable program to install a third executable program for each of the set of instances of the application, and

a component of the application for each of the set of instances of the application. (Col. 6 lines 30-44 disclose that the data may be software, data, update, or the like, which includes executable programs)

4. Claims 5, 13, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sadowsky and Waldin as applied to claims 1, 4, 11-12, 19, and 23 above, and further in view of Meizlik et al. (US 6112323), hereafter Meizlik.

Sadowsky and Waldin teach all the limitations of claims 5, 13, and 21 except for receiving a negative acknowledgement that the data was received and re-transmitting the data.

The general concept of transmitting a NAK to data that was not properly received, and the server retransmitting data that receives a NAK is well-known in

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the art as taught by Meizlik. (Col. 3, lines 46-49 teach the use of a NAK message being sent to an improperly received message and the sender then re-transmitting the data.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sadowsky and Waldin and the general concept of transmitting a NAK to data that was not properly received, and the server retransmitting data that receives a NAK as taught by Meizlik in order to increase the reliability of data transport.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sadowsky and Waldin as applied to claim 1 above, and further in view of Foster (US 6986134).

Sadowsky and Waldin teach all the limitations of claim 7 except for the data being an announcement.

The general concept of distributing an announcement over the network is well known in the art as taught by Foster. (Abstract, Foster teaches that a package may not only be an executable update, but may also be a document (i.e. an announcement))

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sadowsky and Waldin with the general concept of distributing an announcement over the network as taught by Foster in order to allow only users of a specific program to know there is a problem with a program prior to having a patch or fix available.

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6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sadowsky and Waldin as applied to claim 1 above, and further in view of Hansen (US 5838907).

Sadowsky and Waldin teach all the limitations of claims 6 except that the data transmitted is configuration data.

The general concept of transmitting configuration data over the network via files is well known in the art as taught by Hansen. (Abstract “configuring the device by uploading the configuration file thereto.”)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sadowsky and Waldin with the general concept of transmitting configuration data over the network via files as taught by Hansen in order to configure a network device from a central location. (Col. 2 lines 31-36)

7. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sadowsky and Waldin as applied to claim 1 above, and further in view of Ma et al. (US 5920725), hereafter Ma.

Sadowsky and Waldin teach all the limitations of claim 2 except for providing the index file when the index file has been updated.

The general concept of updating old files with new versions when they are changed is well known in the art as taught by Ma. (Abstract lines 12-17 disclose a server updating objects on a client after they have been altered on the server)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sadowsky and Waldin with the general concept of updating old files

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with new versions when they are changed as taught by Ma in order to allow the user to see new updates to the index as quickly as possible.

8. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sadowsky and Waldin as applied to claim 1 above, and further in view of Ma and in further view of Canter et al. (US 2004/0003390), hereafter Canter.

Sadowsky and Waldin teach all the limitations of claim 3 except for providing the index file when the index file has been updated and only checking for updates of the index after a certain period of time since the second request, as specified in the second request.

The general concept of updating old files with new versions when they are changed is well known in the art as taught by Ma. (Abstract lines 12-17 disclose a server updating objects on a client after they have been altered on the server)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sadowsky and Waldin with the general concept of updating old files with new versions when they are changed as taught by Ma in order to allow the user to see new updates to the index as quickly as possible.

Sadowsky and Waldin and Ma teach all the limitations of claim 3 except for only checking for updates of the index after a certain period of time since the second request, as specified in the second request.

The general concept of waiting a certain amount of time before polling to see if updates have occurred is well known in the art as well as the concept of exchanging more than one piece of data in a message as taught by Canter. ([0024] teaches a user

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requesting a certain interval for updates, as well as this request also being a request for data from the sever.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sadowsky and Waldin and Ma with the general concept of waiting a certain amount of time before polling to see if updates have occurred as well as the concept of exchanging more than one piece of data in a message as taught by Canter in order to increase the efficiency of the system.

9. Claims 33-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sadowsky and Waldin as applied to claims 1, 11, and 19 above, and further in view of Claiborne (US 2004/0088698).

Sadowsky and Waldin teach all the limitations of claims 32-43 except for the criteria including a telephone number, state, city, building location, or department.

The general concept of including location information in a software distribution file is well known in the art as taught by Claiborne. (See at least [0028]-[0048])

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sadowsky and Waldin with the general concept of including location information in a software distribution file as taught by Claiborne in order to ease the installation and upgrading of software. ([0009], Claiborne)

### ***Response to Arguments***

10. Applicant's arguments with respect to claims 1-8, 11-13, 19-21, and 27-43 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MICHAEL E. KEEFER** whose telephone number is (571)270-1591. The examiner can normally be reached on Monday through Friday 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MEK 3/13/2009

/Dustin Nguyen/

Primary Examiner, Art Unit 2454